

---

## STATE SETTLEMENT AGREEMENT AND RELEASE

### **I. PARTIES**

This Settlement Agreement ("Agreement") is entered into by the state of Michigan and Warner-Lambert LLC, formerly known as Warner-Lambert Company ("Warner-Lambert") which included as a division Parke-Davis ("Parke-Davis"), and Pfizer Inc ("Pfizer") a Delaware corporation with its principal place of business in New York, which subsequently acquired Warner Lambert, through their authorized representatives. Collectively, all of the above will be referred to as "the Parties".

### **II. PREAMBLE**

A. At all relevant times, Warner-Lambert developed, manufactured, distributed, marketed and sold pharmaceutical products in the United States, including a drug it sold under the trade name Neurontin, generically known as gabapentin.

B. This Agreement addresses the claims against Warner-Lambert for the conduct described in filings in United States v. Warner-Lambert Company, No. [to be assigned] (District of Massachusetts) (the "Criminal Action"), in filings in United States ex rel. David Franklin v. Parke-Davis, Division of Warner-Lambert Company and Pfizer, Civil Action No. 96-CV-11651-PBS (District of Massachusetts) (the "Civil Action") and for the conduct alleged in Preamble Paragraph E below.

C. On or before May 13, 2004, or some other date as may be determined by the court, Warner-Lambert has agreed to or has entered a plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) to a two-count Information alleging a violation of Title 21, United States Code, Sections 331(a), 333(a) and 352(f), namely distribution of an unapproved new drug and distribution of a misbranded drug, in violation of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 331, *et seq.* ("FDCA").

D. The state of Michigan contends that Warner-Lambert caused to be submitted claims for payment for Neurontin to its Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v

E. The state of Michigan contends that it has certain civil claims against Warner-Lambert under state statutes, and/or common law doctrines for engaging in the following conduct:

(i) The state of Michigan contends that, from Third Quarter 1995 through Second Quarter 2001, Warner-Lambert marketed the drug Neurontin for purposes other than those purposes approved by the Federal Drug Administration ("FDA") ("unapproved" or "off-label" uses), and said Warner-Lambert marketing included (a) illegal promotion of the sale and use of Neurontin for a variety of conditions other than the one condition for which its use was approved by the FDA and for which Warner-Lambert had not performed the required FDA testing or established safety and efficacy, in violation of the FDCA; (b) offering and paying illegal remuneration to doctors, either directly or through third parties, to induce them to promote and prescribe Neurontin for "off-label" uses, in violation of various state statutes and (c) false statements in presentations and marketing literature sales personnel provided to doctors concerning, among other things, the uses for which the FDA had approved Neurontin, the conditions for which the use of Neurontin was otherwise medically accepted and/or the existence of adequate evidence of the safety and efficacy for such use. Warner-Lambert earned illegal profits from sales resulting from this program to market "off-label" uses of Neurontin and caused false and/or fraudulent claims to be submitted to the Medicaid Programs for Neurontin that had been dispensed to Medicaid beneficiaries for "off-label" uses and conditions that were not medically accepted indications for its use under 42 U.S.C. § 1396r-8;

(ii) The state of Michigan contends that, the "off-label" marketing of Neurontin resulted in the overutilization of Neurontin between Third Quarter 1995 and Second Quarter 2001 to the state's Medicaid population;

(iii) The state of Michigan contends that, the overutilization of Neurontin based upon Warner-Lambert's "off-label" marketing resulted in the Medicaid program paying claims for Neurontin which were inappropriate for payment by Medicaid between Third Quarter 1995 and Second Quarter 2001;

(iv) Warner-Lambert's conduct as described in the filings in the Criminal Action, the currently pending claims in the Civil Action, and this Preamble Paragraph E are hereafter referred to as the "Covered Conduct."

F. The state of Michigan represents that it does have certain administrative claims for exclusion against Warner-Lambert under the provisions for permissive exclusion from the Medicaid Program, 42 U.S.C. § 1320a-7(b) and corresponding state statutes, for the Covered Conduct.

G. Warner-Lambert denies the allegations of the state of Michigan as set forth herein, except as to such admissions as Warner-Lambert makes in connection with its plea to the Information to which Warner-Lambert has agreed to enter a plea of guilty. This Agreement does not constitute an admission by Warner-Lambert or evidence of any liability or wrongful conduct.

H. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below.

### III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Warner-Lambert agrees to pay to the United States and to the Escrow Agent described below for distribution to the participating states and the District of Columbia that execute a state settlement agreement that has also been executed by Warner-Lambert the sum of

one hundred and fifty-two Million dollars (\$152 M) (the "Medicaid Settlement Amount") and any pre-transfer interest as set forth in the federal settlement. Payments to the Participating States shall be made pursuant to the following terms and conditions:

A. Warner-Lambert agrees to deposit into an escrow account the sum of sixty-eight million, four-hundred thousand (\$68,400,000) (the "State Medicaid Settlement Amount"), which represents the state-funded portions of the claims settled for the Medicaid programs of all states and the District of Columbia. Warner-Lambert shall pay the State Medicaid Settlement Amount, plus pre-transfer interest pursuant to Section III.1.B of this Agreement.

B. Warner-Lambert shall pay pre-transfer interest at a rate of 4 1/2% from November 1, 2003 continuing until and including the day before complete payment is made for the state Medicaid settlement (\$68,400,000) into the escrow account (attachment A).

C. The State Medicaid Settlement Amount of \$68,400,000 plus pre-transfer interest per Section III.1.B is payable into the escrow account no later than seven business days after Warner-Lambert receives written transfer instructions from the negotiating team for the National Association of Medicaid Fraud Control Units ("NAMFCU Negotiating Team") and following the latest of the dates on which the following occurs: (1) the Federal Agreement is fully executed by the Parties and delivered to Warner-Lambert's attorneys, (2) the Escrow Agreement is executed by or on behalf of the Participating States and Warner-Lambert, and (3) the Court accepts the Fed. R. Crim. P. 11(c)(1)(C) guilty plea and imposed the agreed upon sentence in connection with the Criminal Action as described in Preamble Paragraph II.B. The escrow account into which Warner-Lambert shall deposit the State Medicaid Settlement Amount shall be an account under the custody and control of the Medicaid Fraud Control Unit of the state of New York, which shall be designated by the NAMFCU Negotiating Team and which shall act as Escrow Agent and shall retain such funds until their release in accordance with the Escrow

Agreement entered into between Warner-Lambert and the Medicaid Fraud Control Unit of the state of New York.

D. The total portion of the Medicaid Settlement Amount paid by Warner-Lambert in settlement for alleged injury to the Medicaid Program for the state of Michigan is \$4,291,843.15, consisting of a portion paid to the state of Michigan under this Agreement and another portion paid to the federal government as part of the Federal Settlement. The individual state portion of the State Medicaid Settlement Amount, including pre-transfer interest, allocable to the state of Michigan is the sum of \$2,016,730.01 ("Individual State Medicaid Settlement Amount").

E. The state of Michigan shall be entitled to disbursement of its Individual State Medicaid Settlement Amount from the escrow account pursuant to the terms of the Escrow Agreement, which is attached hereto as Exhibit A and is incorporated by reference herein.

2. In consideration of this Agreement and payment set forth herein and subject to the exceptions from release set forth in Paragraph 3 below, the state of Michigan on behalf of itself, its officers, agents, agencies and departments shall fully release and forever discharge Warner-Lambert and Pfizer, its current and former parents, affiliates, divisions, and subsidiaries, and their predecessors, successors and assigns, from any civil or administrative claims for damages or penalties that the state of Michigan has or may have relating to the Covered Conduct. The payment of the Medicaid Settlement Amount fully releases and forever discharges Pfizer from any obligation to pay Medicaid-related restitution, Medicaid related damages, and/or any Medicaid related fine or penalty for the Covered Conduct to the state of Michigan.

3. Notwithstanding any term of this Agreement, the state of Michigan specifically does not herein release Warner-Lambert and Pfizer, its current and former parents, affiliates, divisions, and subsidiaries, and their predecessors, successors and assigns, and its current and former directors, officers, agents and employees from any and all of the following: (a) any potential criminal, civil or administrative claims arising under state of Michigan revenue codes;

(b) any criminal liability not specifically released by this Agreement; (c) any civil or administrative liability that Warner-Lambert and Pfizer have or may have under any state statute, regulation, or rule not covered by the release; (d) any liability to the state of Michigan (or its agencies) for any conduct other than the Covered Conduct; (e) any claims based upon such obligations as are created by this State Settlement Agreement.

4. In consideration of the obligations of Warner-Lambert and Pfizer set forth in this Agreement and payment set forth herein and except as reserved in Paragraph 3 above, the state of Michigan agrees to release and refrain from instituting, directing, recommending or maintaining (a) any administrative claim; or (b) any action seeking exclusion from the state of Michigan's Medicaid program, against Warner-Lambert and Pfizer, its current and former parents, affiliates, divisions, and subsidiaries, and their predecessors, successors and assigns, for the Covered Conduct. Nothing in this Agreement precludes the state of Michigan from taking action against Warner-Lambert and Pfizer in the event that Warner-Lambert and Pfizer are excluded by the federal government, or for conduct and practices other than the Covered Conduct. The state of Michigan does not release Warner-Lambert and Pfizer from any claims or actions which may be asserted by private payors or insurers, including those that are paid by a State's Medicaid program on a capitated basis, to the extent that the state of Michigan does not have the authority to release such claims or actions.

5. The making of this Agreement shall not be construed by the state of Michigan as a basis for the exclusion of any of Warner-Lambert and Pfizer's products from the state of Michigan's formulary.

6. The state of Michigan agrees to dismiss with prejudice any lawsuit specifically as to Warner-Lambert and Pfizer, including any state qui tam "whistleblower" lawsuit, in which the state has intervened or not intervened and/or has the authority to dismiss, currently pending against Warner-Lambert and Pfizer in the courts of the state of Michigan, or any Federal Court relating to the Covered Conduct.

7. This Agreement is expressly conditioned upon acceptance of Warner-Lambert's plea of guilty in the Criminal Action. In consideration of the acceptance of Warner-Lambert's plea of guilty in the Criminal Action, the state of Michigan agrees that it shall not further criminally investigate, prosecute, or refer for prosecution or investigation to any agency, Warner-Lambert and Pfizer, its current and former parents, affiliates, divisions, and subsidiaries, and their predecessors, successors and assigns, for any of the Covered Conduct that occurred at any time up to and including the date of this Agreement.

8. Warner-Lambert and Pfizer fully and finally release the state of Michigan, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Warner-Lambert or Pfizer has asserted, could have asserted, or may assert in the future against the state of Michigan, its agencies, employees, servants, and agents, related to or arising from the investigation and prosecution of the Covered Conduct up to the effective date of this Settlement Agreement.

9. Warner-Lambert and Pfizer waive and will not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or Excessive Fines Clause of the Eighth Amendment of the Constitution or applicable state law provisions, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. Provided, however, that nothing in this paragraph is intended to, or will operate to, limit the scope of Paragraph 7, in which the state of Michigan agrees not to prosecute or investigate Warner-Lambert and Pfizer for certain conduct.

10. Except as otherwise specified herein, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity, including but not limited to any individual or entity that purchased Neurontin from Warner-Lambert and Pfizer.

11. Nothing in any provision of this Agreement constitutes an agreement by the state of Michigan concerning the characterization of the Medicaid Settlement Amount for purposes of the state internal revenue laws

12. In addition to all other payment and responsibilities under this Agreement, Pfizer agrees to pay all travel costs and expenses of the NAMFCU Negotiating Team. Pfizer will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the Participating States execute the Agreements

13. Warner-Lambert and Pfizer covenant to cooperate fully and truthfully with the state of Michigan in any ongoing investigation or investigation commenced within five years of the effective date of this Agreement of individuals and entities not specifically released by this Agreement (including any parties with whom Warner-Lambert and Pfizer has or has had a business or professional relationship, including but not limited to vendors, contractors, partners, joint venturers, physicians, and referral sources) relating to the Covered Conduct.

14. Notwithstanding any provision of this Agreement, Warner-Lambert and Pfizer are not required to (1) request of its present or former officers, directors, employees or agents that they forego seeking the advice of an attorney nor that they act contrary to that advice; (2) take any action against its directors, employees or agents for following their attorney's advice or for failing to submit to an interview or otherwise cooperate with the state of Michigan; or (3) waive any privilege or claim of work product. The failure of any individual to submit to an interview or otherwise to refuse to cooperate with the state of Michigan shall not constitute a breach of this Agreement by Warner-Lambert and Pfizer.

15. Pfizer shall enter into a Corporate Integrity Agreement with HHS-OIG in connection with this matter.

16. Warner-Lambert and Pfizer represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.



17. The undersigned Warner-Lambert and Pfizer signatories represent and warrant that they are authorized by the Board of Directors to execute this Agreement. The undersigned state of Michigan signatories represent that they are signing this Agreement in their official capacities and they are authorized to execute this Agreement on behalf of the state of Michigan through their respective agencies and departments.

18. This Agreement is governed by the laws of the state of Michigan.


19. This Agreement is effective on the date of signature of the last signatory to the Agreement.

20. This Agreement shall be binding on all successors, transferees, heirs and assigns of the Parties.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

22. Each party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary to carry out this Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.


**For the state of Michigan:**

By: 

Dated: 6-18-04

Title: DIRECTOR - MI HFCU

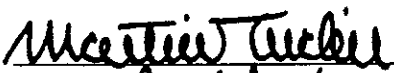
**For the state of Michigan Medicaid Program:**

By: 

Dated: 5/27/2004

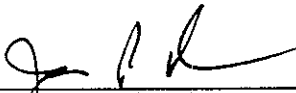
Title: Director - Bureau of  
Medicaid Financial Management

Warner-Lambert Company LLC

By:   
Vice President

Dated: 3/17/05

Pfizer Inc

By: 

Dated: 3/17/05

Robert B. Fiske, Jr.  
James P. Rouhandeh  
Davis Polk & Wardwell  
Counsel to Pfizer Inc and Warner-Lambert